

I. The threshold question in considering H.R. 61 is whether the Central Intelligence Agency is a "criminal justice agency" within the meaning of Section 102(6). It would appear that to the extent the Agency gathers information relating to the "detection of... criminal offenses" in connection with terrorism, narcotics and counterintelligence, it is a "criminal justice agency" under the bill. Section 103 applies the Act to any criminal justice agency of the Federal Government, but would exempt from its provisions "criminal justice intelligence information... specifically required by Federal Executive order to be kept secret in the interests of national defense or foreign policy" (emphasis added). It is questionable that the broad charge of E.O. 11652 fulfills the specificity requirement of Section 103(b)(8). This is the same language used in the limited exemption in the Freedom of Information Act.

II. Section 201(a) provides that "criminal justice information shall be exchanged, disseminated, and used only in the manner provided by this act."

A. Assuming the Agency is a "criminal justice agency" as defined in the bill, then under Section 102(6) it would be so only to the extent that its activities relate to the detection of criminal offenses.

It would appear that only information gathered by the agency concerning terrorism, narcotics traffic, and counterintelligence would constitute "criminal justice information" subject to the regulations of the Act. Under Section 201(d) information obtained from foreign governments would be subject to the same restrictions and limitations on use as information obtained from domestic sources. As a "criminal justice agency" the Agency would be subject to the regulations embodied in Title 2 of the Act concerning the collection, dissemination, and use of criminal justice information by criminal justice agencies and the provisions for the administration and enforcement of these regulations by the Commission created in Title 3 of the Act. Some of these requirements would be unacceptable.

The Agency would have to:

- (1) Publish regulations under Section 201(a) specifying, inter alia, the type of criminal justice information system maintained.
- (2) Access "arrest record information" and "criminal record information" for the personal inspection of the subject individual (presumably including foreigners) as enforced by judicial remedies provided in Section 307.

(3) Disseminate criminal justice information for non-criminal justice purposes only as provided in Sections 204 and 205.

(4) Provide the Commission on Criminal Justice Information all information necessary to compile a public directory of criminal justice information systems subject to the Act identifying their nature, purpose, and scope.

B. On the other hand, if the Agency is not a "criminal justice agency" as defined by the bill, another set of problems would arise:

(1) Access to information: The limitations in Section 204 on the collection, dissemination, and use of criminal justice information for non-criminal justice purposes would apparently restrict Agency access to certain kinds of information held by domestic criminal justice agencies and, by implication of Section 201(d), held by foreign governments. For example, criminal justice intelligence information held by a domestic criminal justice agency could not be made available to the Agency even if highly pertinent to the foreign intelligence mission.

(2) Gathering of information. It is not clear what impact the bill would have on this Agency's collection of foreign intelligence which included items of "criminal justice information." Section 206(a) provides cryptically that "Any agency or person obtaining criminal justice information from another agency or person is prohibited from using that information for any purpose not authorized by law or disseminating that information, directly or through any intermediary, to any other agency or person not authorized by law to receive it." Moreover, Section 201(d) implies that foreign "criminal justice agencies" would have to conform to the restrictions of Sections 204 and 205 in their dealings with U.S. organizations, and, therefore, could only make available to this Agency, criminal justice information where provided in those sections.

(3) Protection of assets and other systems. The public access to arrest and criminal record information maintained by criminal justice agencies granted to any subject individual by Section 208 could

conceivably involve the disclosure of intelligence sources and methods where subject records are based on Agency reports. Section 209(d) suggests that the criminal justice intelligence information based on Agency reports held by domestic criminal justice agencies could be made public where ordered by a court of competent jurisdiction.

III. In conclusion, the Agency should seek modification of the bill (1) to ensure that it would not be considered a "criminal justice agency"; and (2) to ameliorate the restrictions that would be imposed on the Agency in the status of a non-criminal justice agency.